

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ARDIS WRIGHT, ET AL.

v.

CITY OF MARSHALL TEXAS

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Case No. 2:15-CV-279-RSP

MEMORANDUM ORDER

Currently before the Court is the Motion for Summary Judgment by Defendant City of Marshall (Dkt. No. 33), filed on December 2, 2015. For the reasons set out below, the Court finds that there are genuine disputes of material fact that prevent disposition of this case on a summary judgment basis. Accordingly, the Motion is DENIED.

The Plaintiffs are three African American former employees of the City of Marshall who allege that their jobs were eliminated at the end of 2013 on account of their race. It is undisputed that their jobs were eliminated in the 2014 City Budget, which was adopted in December 2013 by a 4 to 3 vote of the City Commission. The four votes in favor were by white Commissioners and the three votes against were by African American Commissioners. The four¹ Commissioners who voted in favor have each testified by deposition or affidavit that race was not a factor, and that they relied, at least in part, upon the recommendations of an outside consultant as to the restructuring reflected in the budget. The three Commissioners who voted against have testified, to differing extents, that race played a factor in the vote. Other employees of the City and the consultant have provided differing testimony as to the factors involved, including the role of the outside consultant.

¹ With the exception of Bill Marshall, who is deceased.

Defendant relies heavily on the caselaw concerning the proof necessary to establish a *prima facie* case in situations of reductions in force. *E.g., Ortiz v. Shaw Group, Inc.*, 250 Fed. Appx. 603 (5th Cir. 2007). However, whether this case is such a situation is one of the contested facts. Similarly, it is not clear that the testimony of the three Commissioners who voted against the budget is not direct evidence. Even though they voted against the measure, they were members of the decision-making body whose statements would ordinarily constitute direct evidence rendering the *prima facie* case unnecessary. While the merits of this case are still very much in dispute, the Court finds that Plaintiffs have submitted sufficient direct and circumstantial summary judgment evidence to justify denial of the motion. Accordingly, the motion for summary judgment is DENIED.

SIGNED this 27th day of February, 2016.


ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE